

S.127

An act relating to the procedures and review of community supervision
furlough revocation or interruption appeals

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 28 V.S.A. § 724 is amended to read:

§ 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION

FURLOUGH

* * *

(b) ~~90-day~~ 180-day interruption or revocation. Any interruption of an offender's community supervision furlough after the Department has found a technical violation of furlough conditions shall trigger a Department Central Office case staffing review and Department notification to the Office of the Defender General if the interruption will be ~~90~~ 180 days or longer.

(c) Appeal.

(1) An offender whose community supervision furlough status is revoked or interrupted for ~~90~~ 180 days or longer for a technical violation shall have the right to appeal the Department's determination to the Civil Division of the Superior Court in accordance with Rule 74 of the Vermont Rules of Civil Procedure. The appeal shall be based on a de novo review of the record. The appellant may offer testimony, and, in its discretion for good cause shown, the court may accept additional evidence to supplement the record. If

additional evidence is accepted by the court, the Department, through the Office of the Vermont Attorney General, shall have the opportunity to present rebuttal evidence, including testimony, for the court's consideration. The notice of appeal filed pursuant to Rule 74 shall include a certification that the court has subject matter jurisdiction. The Department shall file an objection to subject matter jurisdiction within 14 days, which shall stay the filing of the record on appeal until the court issues an order on the Department's objection.

The appellant shall have the burden of proving by a preponderance of the evidence that the Department abused its discretion in imposing a furlough revocation or interruption for ~~90~~ 180 days or longer pursuant to subsection (d) of this section.

(2) An appeal filed pursuant to this subsection shall be limited to determine whether the decision to interrupt or revoke an offender's community supervision furlough status was an abuse of discretion by the Department based on the criteria set forth in subdivision (d)(2) of this section. The length of interruption or revocation may be a consideration in the abuse of discretion determination.

(3) An appeal filed pursuant to this subsection shall be brought in the unit of the Superior Court in which the offender resided at the time that the offender's furlough status was revoked or interrupted or the unit in which the offender is detained after the offender's furlough status was revoked or

interrupted. If an appeal is filed pursuant to this subsection in a unit lacking proper venue, the court, on its own motion or on timely motion of a party to the appeal, may transfer the appeal to a unit having proper venue.

(d) Technical violations.

(1) As used in this section, “technical violation” means a violation of conditions of furlough that does not constitute a new crime.

(2) It shall be abuse of the Department’s discretion to revoke furlough or interrupt furlough status for ~~90~~ 180 days or longer for a technical violation, unless:

(A) the offender’s risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable; ~~or~~

(B) the violation or pattern of violations indicate the offender poses a danger to others ~~or to the community or poses a threat to abscond or escape from furlough; or~~

(C) the Commissioner has issued a warrant for the arrest of an offender because the offender absconded from furlough.

Sec. 2. APPLICABILITY

(a) Notwithstanding 1 V.S.A. §§ 213 and 214(b), the following provisions shall apply retroactively to any pending appeal filed at any time prior to the effective date of this act:

(1) the provisions of 28 V.S.A. § 724(c)(1) related to subject matter jurisdiction certification and the Department's ability to object to subject matter jurisdiction; and

(2) 28 V.S.A. § 724(c)(3) (venue).

(b) An appeal filed on or after the effective date of this act shall be reviewed under the 180-day or longer interruption or revocation period provided for in 28 V.S.A. § 724(c)(1) and (d)(2).

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.